

No. 14707

United States
Court of Appeals
for the Ninth Circuit

HOWARD E. ROGERS, Doing Business as HOW-
ARD E. ROGERS CO.,

Appellant,

VS.

GEORGE GARDNER, Trustee in Bankruptcy of
the Estate of HOWARD E. ROGERS, Etc.,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Central Division.

FILED

MAY -2 1955

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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Los Angeles 14, Calif.

For Appellee:

ERNEST R. UTLEY,
417 S. Hill St.,
Los Angeles 13, Calif.

In the United States District Court, Southern
District of California, Central Division

In Bankruptcy No. 55620-BH

In the Matter of:

HOWARD E. ROGERS, dba HOWARD E.
ROGERS CO.,

Alleged Bankrupt.

CREDITORS' PETITION

To the Honorable Judges of the District Court of
the United States for the Southern District of
California, Central Division:

The petition of Williams Farms Company, Inc., a
California Corporation, of Oxnard, California; and
Pismo-Oceano Vegetable Exchange, Inc., a Califor-
nia Corporation, of Oceano, California, and Reyes
& De Leon Packing Company, a co-partnership,
of Guadalupe, California, respectfully represents:

1. That Howard E. Rogers, dba Howard E.
Rogers Co., has had his principal place of business
at 746 South Central Avenue, Los Angeles, Califor-
nia, within the above judicial district, for a longer
portion of the six months immediately preceding the
filing of this petition than in any other judicial
district.

2. That Howard E. Rogers, dba Howard E.
Rogers Co., owes debts to the amount of \$1,000.00,
and is not a wage-earner or a farmer.

3. Your petitioners are creditors of said Howard E. Rogers, dba Howard E. Rogers Co., having provable claims against him, fixed as to liability and liquidated in amount, amounting in the [2*] aggregate, in excess of the value of securities held by them, to \$500.00. The nature and amount of your petitioners' claims are as follows:

(a) The claim of Williams Farms Company, Inc., a California Corporation, is in the sum of \$15,165.65, for produce sold and delivered by the said corporation to the said Howard E. Rogers, dba Howard E. Rogers Co., in November, 1952, at an agreed price as above set forth, no part of which has been paid; together with produce consigned to the said Howard E. Rogers, dba Howard E. Rogers Co., by said corporation, in November, 1952, at an ascertained price of \$8,231.48, no part of which has been paid.

(b) The claim of Pismo-Oceano Vegetable Exchange, Inc., a California Corporation, is in the sum of \$7,800.00, for celery sold and delivered by the said corporation to the said Howard E. Rogers, dba Howard E. Rogers Co., in November, 1952, at an agreed price as above set forth, no part of which has been paid.

(c) The claim of Reyes & De Leon Packing Company, a co-partnership consisting of Salvadore Reyes and Gabriel De Leon is in the sum of \$7,643.87, for tomatoes and lettuce sold and de-

***Page numbering appearing at foot of page of original Certified Transcript of Record.**

livered by the said co-partnership to the said Howard E. Rogers Co., in October and November, 1952, at an agreed price as above set forth, no part of which has been paid.

4. That with four months next preceding the filing of this petition, the said Howard E. Rogers, dba Howard E. Rogers Co., committed an act of bankruptcy in that heretofore and subsequent to the first day of November, 1952, the exact date or dates of which is unknown to petitioners, while insolvent and having more than one creditor, transferred certain of his money, including the moneys received from the sale of merchandise sold to him by petitioners for which they have not been paid, the amount of which money is to your petitioners unknown but which amount was in excess of \$50,000.00, to certain of his creditors [3] whose names are unknown to petitioners, with intent to prefer said creditors over other creditors of said Howard E. Rogers, dba Howard E. Rogers Co.

That when the amount of said money so transferred as above set forth, and the names of the creditors to whom said money was transferred, are known to petitioners, petitioners will ask leave of this Honorable Court to amend their petition.

Wherefore, petitioners pray that service of this petition, with a subpoena, may be made upon said Howard E. Rogers, dba Howard E. Rogers Co., as provided in the Act of Congress relating to bank-

ruptey, and that he may be adjudged by the Court to be a bankrupt within the purview of said Act,

WILLIAMS FARMS COMPANY, INC., a California Corporation,

By /s/ PRESTON PLUMB, JR.,
Vice-President;

PISMO-OCEANO VEGETABLE EXCHANGE, INC., a California Corporation,

By /s/ KINGO KAWAOKA,
President;

REYES & DE LEON PACKING COMPANY,

By /s/ GABIEL DE LEON,
Petitioners.

G. V. WEIKERT and
ERNEST R. UTLEY,

By /s/ G. V. WEIKERT,
Attorneys for Petitioning
Creditors.

Duly verified.

[Endorsed]: Filed December 29, 1952. [4]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 29th day of December, 1952.

Whereas, a petition was filed in this court on the 29th day of December, 1952, against Howard E. Rogers, dba Howard E. Rogers Co., alleged bankrupt above named, praying that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Benno M. Brink, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Howard E. Rogers, dba Howard E. Rogers Co., shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ ERNEST A. TOLIN,
District Judge.

[Endorsed]: Filed December 29, 1952. [7]

In the District Court of the United States for the
Southern District of California

In Bankruptcy No. 55620-BH

In the Matter of

HOWARD E. ROGERS, dba HOWARD E.
ROGERS CO.,

Bankrupt.

Adjudication of Bankruptcy

At Los Angeles, in said District, on the 20th
day of January, 1953.

The petition of Williams Farms Company, Inc., a California corporation; Pismo-Oceano Vegetable Exchange, Inc., a California corporation; and Reyes & De Leon Packing Company, a co-partnership, filed on the 29th day of December, 1952, that Howard E. Rogers, dba Howard E. Rogers Co., be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and there being no opposing interest;

It is adjudged that the said Howard E. Rogers, dba Howard E. Rogers Co., is a bankrupt under the Act of Congress relating to bankruptcy.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed January 20, 1953. [8]

[Title of District Court and Cause.]

SPECIFICATIONS OF OBJECTIONS
TO DISCHARGE

Comes now George Gardner, trustee of the estate of the above-named bankrupt, and having examined into the acts and conduct of said bankrupt and being satisfied that probable grounds exist for the denial of the discharge of said bankrupt and that the public interest so warrants, does hereby oppose the granting to said bankrupt of a discharge from his debts and specifies the following as grounds of objection:

Specification Number I

The trustee alleges that the bankrupt obtained money and property on credit, to wit: celery, tomatoes and lettuce and other produce, sold and delivered to the bankrupt on credit by the petitioning creditors herein, to wit: Williams Farms Company, Inc., a California corporation; Pismo-Oceano Vegetable Exchange, Inc., a California corporation, and Reyes & De Leon Packing Company, a copartnership, by making and publishing and causing to be made and published a materially false statement in writing respecting the bankrupt's financial condition; that the making and publishing of said materially false statement in writing respecting the [9] bankrupt's financial condition was made to Produce Reporter Co. on or about the 31st day of July, 1952, for the purpose of establishing and maintaining credit; wherein the bankrupt listed the following:

Assets:

Cash in bank and on hand.....	\$ 8,260.15
Cash value—annuities	9,000.00
Other assets—deferred	1,363.17
Net profit, first seven months of 1952	20,775.00
Net Worth of	57,484.37

Liabilities:

Accounts payable for merchandise...	\$32,215.45
Notes payable	9,393.63

That said statement in writing was materially false in the following:

That the bankrupt, as of the date of said financial statement, to wit: July 31, 1952, had no cash in the bank or on hand, but on the contrary had a large deficit; that the item listed as "Cash value—annuities \$9000.00" did not exist, neither did the item "Other Assets—Deferred \$1,363.17" exist; that instead of the bankrupt's net profits for the first seven months of 1952 being \$20,775.00, said net profits were in fact only \$1,201.66. That the accounts payable for merchandise, at the time of the giving of said financial statement, instead of being \$32,215.45, was in fact \$192,030.95, or a total understatement of \$159,815.50. That the notes payable at the time of the giving of the false financial statement instead of being \$9,393.63, were in fact \$19,393.63, or \$10,000.00 more than as shown in said financial statement. That instead of the bankrupt having a

net worth of \$57,484.37, said bankrupt was in fact insolvent in that he had approximately \$120,586.03 more debts and obligations than [10] the total value of his assets.

That by giving said materially false statement in writing respecting the financial condition of the bankrupt, said bankrupt was able to and he did obtain credit from Williams Farms Company, Inc., a California corporation; Pismo-Oceano Vegetable Exchange, Inc., a California corporation, and Reyes & De Leon Packing Company, a copartnership, and others, who were engaged in the selling of vegetables and produce to the said bankrupt, which said credit could not have been obtained from the aforesaid creditors except by and through false and fraudulent representations made by the bankrupt in said statement in writing as aforesaid.

Specification Number II

That as an additional specification and ground for objection to bankrupt's discharge, your trustee alleges that the bankrupt has failed to explain satisfactorily losses of assets and/or deficiency of assets to meet his liabilities and more particularly has failed and refused to explain satisfactorily the disposition of moneys and merchandise coming into his hands from August, 1952, to the date of the filing of the petition in bankruptcy.

Wherefore, petitioner prays that the discharge of the bankrupt herein be denied and for such other

and further relief as the Court may deem just and proper in the premises.

/s/ GEORGE GARDNER,

Trustee;

/s/ ERNEST R. UTLEY,

Attorney for Trustee.

Duly verified.

[Endorsed]: Filed June 30, 1953, Referee. [11]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW RE SPECIFICATIONS OF OB-
JECTION TO BANKRUPT'S DISCHARGE

The above-entitled matter having come on for hearing upon the Specifications of Objection to Bankrupt's Discharge on the 11th day of December, 1953, at 10 a.m. before the above-entitled Court; the trustee being represented by his counsel, Ernest R. Utley, and the bankrupt being personally present and represented by his counsel, Quittner & Stutman, and the Court having received evidence, both oral and documentary, and having heard argument of counsel and being fully advised in the premises, now makes its Findings of Fact and Conclusions of Law as follows:

Findings of Fact

I.

The Court finds that George Gardner is the duly-qualified and acting trustee of the above-entitled

bankruptcy estate, and as such filed the specifications of objection to the discharge of the bankrupt herein.

II.

As to specification No. 1 of the aforesaid objections, [12] the Court makes the following findings of fact:

(a) That Produce Reporter Company is a national mercantile agency for the produce reporting business and allied lines; that it annually publishes a volume called the "Blue Book," in which it supplies credit information to its subscribers upon business institutions engaged in the produce business; that the said book is supplemented by credit sheets which are furnished to the subscribers to the "Blue Book" at weekly intervals; that the information which is given in the book and in the weekly credit sheets is expressed in various symbols, the meaning of which is contained in the book.

(b) That in the "Blue Book" which was published in April of 1952, or thereabouts, the following information was given with respect to the bankrupt, "25M XXX 148," which interpreted meant that the bankrupt had an estimated financial worth of \$25,000.00, that his reported methods, business reputation and credit standing were good, that the Produce Reporter Company had conflicting reports with respect to him and that the rating given to him indicated the reported general experience with him.

(c) That on or about September 15, 1952, the

bankrupt made and delivered to the Produce Reporter Company a statement in writing respecting his financial condition as of July 31, 1952; that the said statement was materially false in that it showed a net worth, or an excess of assets over liabilities in the sum of \$57,484.37, whereas in truth and in fact the bankrupt was insolvent on July 31, 1952, by reason of the fact that on said date his liabilities exceeded his assets in the approximate sum of \$120,586.03.

(d) That in its weekly credit sheet on October 24, 1952, the Produce Reporter Company gave the following information with respect to the bankrupt: “(69) (144) XXX 148,” [13] which interpreted meant that its reported previous report should be revised to read that it reported no definite estimate as to the bankrupt’s financial worth, that his reported methods, business reputation and credit standing were good, that the Produce Reporter Company had conflicting reports with respect to him, and that the rating given to him indicated the reported general experience with him.

(e) That among the symbols used by the Produce Reporter Company is one consisting of the numerals “110,” which interpreted means “Reported insolvent.”

(f) That Williams Farms Company, Inc., a California corporation, was a subscriber to the aforesaid “Blue Book,” and that it received the aforesaid volume which was published in April of 1952, or

thereabouts, and the aforesaid weekly credit sheet of October 24, 1952; that it noted the information given in the said volume and in the said credit sheet with respect to the bankrupt; that in November of 1952, and in reliance upon the said information, it sold and delivered to the bankrupt on credit \$25,000.00 worth of fresh carrots in crates.

III.

As to specification No. 2 of the aforesaid objections, the Court finds that no proof in support of said specification has been offered and that the truth of the allegations therein contained has not been established.

Conclusions of Law

I.

That the objector has shown to the satisfaction of the Court that there are reasonable grounds for believing that the bankrupt obtained property on credit from Williams Farms Company, Inc., by making and delivering the aforesaid materially false statement in writing respecting his [14] financial condition, in the manner as aforesaid, in that there are reasonable grounds for believing:

(a) That the Produce Reporter Company relied upon the said false statement in furnishing the information with respect to the bankrupt which was contained in its aforesaid weekly credit sheet of October 24, 1952;

(b) That if the said statement had been true, the said Company in its said weekly credit sheet

would have furnished information to the effect that the bankrupt was insolvent; and

(c) That in such event the Williams Farms Company would not have sold and delivered the aforesaid property to the bankrupt on credit as aforesaid.

II.

That the bankrupt has not sustained the burden of proving that he did not obtain property or credit in the manner as aforesaid and that accordingly he has committed an act which prevents his discharge in this bankruptcy proceeding.

III.

That specification No. 1 of the objections has been sustained and that specification No. 2 thereof should be dismissed.

IV.

That the bankrupt's discharge should be denied.

Dated: October 21, 1954.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed October 21, 1954, Referee. [15]

[Title of District Court and Cause.]

ORDER DENYING DISCHARGE
OF BANKRUPT

At Los Angeles, in said district, on the 21st day of October, 1954.

It appearing that Howard E. Rogers, dba Howard E. Rogers Co., of Los Angeles, in the County of Los Angeles, State of California, was duly adjudged a bankrupt on a petition filed against him on the 29th day of December, 1952; and

It further appearing that, after due notice by mail, Specifications of Objection to the discharge of said bankrupt were filed by the Trustee within the time fixed by the Court; that the same were duly heard and Findings of Fact and Conclusions of Law entered thereon, and good cause appearing therefor,

It Is Ordered that Specification No. I be and the same is hereby sustained.

It Is Further Ordered that Specification No. II be and the same is hereby dismissed.

It Is Further Ordered that the bankrupt's discharge be and the same is hereby denied.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed October 21, 1954. [16]

[Title of District Court and Cause.]

PETITION OF BANKRUPT FOR REVIEW
OF ORDER OF REFEREE DENYING DIS-
CHARGE IN BANKRUPTCY

To the Honorable Benno M. Brink, Referee in
Bankruptcy:

The petition of Howard E. Rogers, doing business
as Howard E. Rogers Co., respectfully represents:

I.

That petitioner is aggrieved by that Order of the
Honorable Benno M. Brink, Referee in Bank-
ruptcy, denying discharge of bankrupt, dated Octo-
ber 21, 1954, a true copy of which is attached hereto
as Exhibit "A."

II.

That there is, and could be, no Finding of Fact
that Williams Farms Company, Inc., in extending
credit, relied upon the financial statement issued by
the bankrupt, and absent such a finding the Referee
erred in sustaining Specification No. I of the Objec-
tions to Discharge.

III.

The Referee erred in making Conclusions of Law
I (a) in that there is no evidence that Produce Re-
porter Company relied upon [17] the financial state-
ment of the bankrupt in making its credit rating of
him in the credit sheet of October 24, 1952.

IV.

The Referee erred in making Conclusions of Law
I (b) and I (c) with respect to the action which

“would have” been taken by Produce Reporter Company and Williams Farms Company, Inc., had an accurate financial statement been issued by the bankrupt. There is no evidence in the record to sustain said Conclusions and said Conclusions are speculative.

V.

The Referee erred in refusing petitioner's request to make the following Findings of Fact:

“1. Nothing in the financial rating given by Produce Reporter Company to the bankrupt indicated that the bankrupt had furnished any financial statement.

“2. There is no evidence in the record concerning the basis on which Produce Reporter Company gave the bankrupt his financial rating and there is no evidence as to what rating would have been given the bankrupt if an accurate financial statement had been rendered.

“3. The bankrupt's rating of October 24, 1952, contained no indication of, or reference to, his net worth.

“4. Produce Reporter Company did not believe or rely on the bankrupt's financial statement in preparing its financial rating of him of October 24, 1952.

“5. At the time of extending credit to the bankrupt, Williams Farms Company, Inc., did not know that the bankrupt had issued a financial statement to Produce Reporter Company, and did not discover

said fact until after bankruptcy ensued. Williams Farms Company had no indication from the financial rating given the bankrupt by Produce Reporter Company that a financial statement had been issued, nor did said rating indicate to Williams Farms [18] Company the net worth of the bankrupt.

“6. Williams Farms Company did not rely in extending credit to the bankrupt on the financial statement furnished by him to Produce Reporter Company.”

Wherefore, petitioner prays that said Order Denying Discharge be reviewed by a Judge in accordance with the provisions of the Bankruptcy Act, that said Order be reversed, that petitioner be granted his discharge in bankruptcy, and that petitioner have such other and further relief as is just.

Dated this 28th day of October, 1954.

HOWARD E. ROGERS, Doing Business as HOW-
E. ROGERS CO.,

By QUITTNER AND STUTMAN,
Attorneys for Bankrupt.

By /s/ GEORGE M. TREISTER.
Affidavit of Service by Mail attached.

[Endorsed]: Filed November 1, 1954, [19] Ref-
eree.

In the United States District Court, Southern
District of California, Central Division

In Bankruptcy No. 55,620-BH

In the Matter of:

HOWARD E. ROGERS, d/b/a HOWARD E.
ROGERS CO.,

Bankrupt.

ORDER AFFIRMING ORDER OF THE REF-
EREE DENYING BANKRUPT A DIS-
CHARGE

The above-entitled matter came on for hearing on March 22, 1954, upon the petition of the bankrupt, Howard E. Rogers, to review an order of the Honorable Benno M. Brink, Referee in Bankruptcy, entered October 21, 1954, sustaining a specification of objection to the bankrupt's discharge and denying the bankrupt a discharge, and

The bankrupt being represented by his attorneys, Quittner and Stutman, appearing by George Treister, and the trustee being represented by his attorney, Ernest R. Utley, and

The parties having filed points and authorities setting forth their arguments and after oral argument, the matter was submitted to the Court for its decision, and the Court being fully advised in the premises, and the Court having on February 10th, 1955, announced its decision that the order of the Referee of October 21, 1954, be affirmed,

Now, Therefore, the Court hereby adopts the findings of fact and conclusions of law of the Referee made October 21, 1954. [30]

It Is Ordered, Adjudged and Decreed that the petition of the bankrupt, Howard E. Rogers, for a review of the aforesaid order of the Referee be denied, and

It Is Further Ordered, Adjudged and Decreed that the order of the Referee dated October 21, 1954, be, and it hereby is, affirmed.

Dated this 17th day of February, 1955.

/s/ BEN HARRISON,
U. S. District Judge.

Approved as to Form:

QUITTNER & STUTMAN,
By /s/ GEORGE M. TREISTER,
Attorneys for Bankrupt.

[Endorsed]: Filed February 17, 1955.

Judgment docketed and entered February 18, 1955. [31]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Howard E. Rogers, dba Howard E. Rogers Co., the above-named bank-

rupt, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order Affirming Order of the Referee Denying Bankrupt a Discharge dated February 18, 1955.

Dated: February 23, 1955.

QUITTNER AND STUTMAN,
Attorneys for Bankrupt.

By /s/ GEORGE M. TREISTER.

[Endorsed]: Filed March 2, 1955. [32]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF
POINTS ON APPEAL

Comes Now Appellant and, pursuant to Rule 75 (d) of the Federal Rules of Civil Procedure, furnishes the following Statement of Points on Appeal:

No creditor relied in extending credit upon the financial statement of the bankrupt and, in the absence of such reliance, there is no basis for denying the bankrupt a discharge under Section 14 (c) (3) of the Bankruptcy Act.

Respectfully submitted,

QUITTNER AND STUTMAN,
Attorneys for Appellant.

By /s/ GEORGE M. TREISTER.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 2, 1955. [34]

In the United States District Court, Southern
District of California, Central Division

In Bankruptcy No. 55,620-BH

In the Matter of:

HOWARD E. ROGERS, d/b/a HOWARD E.
ROGERS CO.,

Bankrupt.

Before: The Honorable Benno M. Brink,
Referee in Bankruptcy.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

At Hearing on Objections to Discharge

December 11, 1953

Appearances:

For George Gardner, Trustee in Bankruptcy,
Objector:

ERNEST R. UTLEY, ESQ.,
417 South Hill Street,
Los Angeles, California.

For the Bankrupt:

MESSRS. QUITTNER & STUTMAN, by
FRANCIS F. QUITTNER, ESQ., and
GEORGE M. TREISTER, ESQ.,
639 South Spring Street,
Los Angeles, California.

Friday, December 11, 1953—10 A.M.

The Referee: Howard E. Rogers.

Mr. Utley: Ready.

Mr. Quittner: Ready for the Bankrupt.

The Referee: All right. These are the Specifications of Objections to Discharge filed by the Trustee. We have two Specifications; one based upon an alleged false financial statement; the other upon the failure to satisfactorily explain the loss of assets. You may proceed, gentlemen.

Mr. Utley: Will you take the stand, Mr. Gordon?

RAYMOND W. GORDON

the witness, having been first duly sworn by said Referee in Bankruptcy, testified as follows:

The Referee: What is your name, sir?

A. Raymond W. Gordon.

The Referee: Proceed, Mr. Utley.

Direct Examination

By Mr. Utley:

Q. Mr. Gordon, give us your address, please.

A. 247 Wholesale Terminal Building, Los Angeles.

Q. And what is the nature of your business or your occupation?

A. I am with the Produce Reporter Company, which is a national mercantile agency for the produce reporting business and allied lines. [2*]

Q. And how long have you been so engaged?

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Raymond W. Gordon.)

A. Approximately five years.

Q. Have you been located here in Los Angeles with offices here during that entire time?

A. Yes.

Q. Did your agency have occasion to call upon Howard E. Rogers during the year 1942 for a financial statement? A. Do you mean 1942?

Q. No, I mean 1952. Pardon me. A. Yes.

Q. Have you that statement with you?

A. Yes, and I would like to explain here that I think it is the understanding that I have the original and that it must go back to the company, and I have an exact photostatic copy of it.

The Referee: Very well.

Mr. Utley: Have you seen it, or do you want to see it, Mr. Quittner?

Mr. Quittner: No, I haven't seen it, but I have no objection.

The Referee: Do you want to stipulate that statement was given by the bankrupt to the Produce Reporter Company?

Mr. Quittner: No; all I stipulate to so far is that he may use the copy instead of the original.

Q. (By Mr. Utley): Do you know about what date you received a copy of this statement? [3]

A. Yes, September 15, 1952.

Q. Is this in the same condition it was in when the Produce Reporter Company received it here in Los Angeles?

A. Yes, except for the pencil figures in there at the top, I would say it is the same.

(Testimony of Raymond W. Gordon.)

Q. All the figures other than the pencil figures were on it at the time you received the copy of it?

A. Yes.

Mr. Utley: Do you stipulate the signature on this statement is that of Howard E. Rogers?

Mr. Quittner: I assume so, but let me ask him. (Pause.) Yes, we so stipulate.

Mr. Utley: We would like to offer this copy in evidence as the Trustee's Exhibit No. 1, offering the copy in lieu of the original.

The Referee: It is received as Objector's Exhibit No. 1.

Q. (By Mr. Utley): Mr. Gordon, when the Produce Reporter Company receives such a statement what do they do with that statement?

A. The statement is analyzed and the assets and liabilities checked and verified as much as can be done and, of course, the statement is retained for the financial condition and information and net worth.

Q. Is that put in the form of a book?

A. It is published first in the Weekly Credit Sheet, [4] and then carried into the next Credit Book that is printed.

Q. Does the Produce Reporter Company have a Weekly Credit Sheet? A. Yes.

Q. Does that go out to all of your subscribers?

A. Yes, it does.

Q. Does it have any Credit Report?

A. Yes.

Q. Does that go out to all your subscribers?

(Testimony of Raymond W. Gordon.)

A. Yes, and that is a consolidation of these Weekly Credit Sheets, and at the beginning of the year the condition is put into the Blue Book itself, and prior to this time we have always published that book April 1st.

Q. After the book is published in a given year the credit rating of each person named therein is followed through in these Weekly Credit Sheets to your subscribers, and show any change, if there is any change? A. Yes.

Q. After you received this financial statement from Howard E. Rogers was that information conveyed on to your subscribers? A. Yes.

Q. In what manner?

A. I presume in that Mr. Rogers having been in business several years, and he would have a credit rating and it would be put in the Weekly Credit Sheet. [5]

The Referee: That is a presumption. Haven't you the actual record of that?

Q. (By Mr. Utley): Have you that record?

A. No, but that is in our record of our company, but I don't have it with me.

Q. Do you know what the rating of Mr. Rogers was pursuant to this financial statement you have just identified? A. Yes.

Q. What was it? A. It was 25M.

Q. What does that mean? A. \$25,000.

Mr. Quittner: I am not clear on that; the question is not clear. When you say the "rating" do

(Testimony of Raymond W. Gordon.)

you mean the rating after that statement was issued?

Mr. Utley: Yes.

Mr. Quittner: Did you understand that, Mr. Gordon?

The Witness: No, I didn't, but I believe the 1952 Blue Book published in April carried the rating of 25M, XXX 148.

The Referee: We have this evidence from his memory only.

Q. (By Mr. Utley): Did you bring that rating record with you? A. No.

Q. Do you have copies of that? [6]

A. Yes.

Mr. Quittner: We have copies of them that we would be glad to furnish you.

The Referee: I didn't get the date when your company received this copy, the report introduced as Objector's Exhibit No. 1.

The Witness: September 15th.

The Referee: What year?

The Witness: 1952.

The Referee: What does 25M indicate?

The Witness: That indicates the collectible net worth of \$25,000.

The Referee: What does the 3 X's mean?

The Witness: That means good ability and integrity.

The Referee: What does the 148 mean?

The Witness: I can't give you the exact words, but it is in the book and means confirmed reports.

(Testimony of Raymond W. Gordon.)

The Referee: Confirmed reports as to what?

The Witness: It might mean that if we had 20 references from the individual, maybe two or three of them claimed trouble as to slow pay, or something not delivered as he stated it would be, but it means good.

The Referee: Go ahead, Mr. Utley.

Mr. Utley: Now, I would like to have the witness produce these Weekly Credit Sheets or the Quarterly Sheets, or both. Mr. Quittner says he has them, and I am willing to [7] take them——

Mr. Quittner: No, I am not supposed to produce them for you.

The Referee: You allege, Mr. Utley, that certain specific creditors extended credit in reliance on this statement?

Mr. Utley: Yes.

The Referee: Have you those creditors here?

Mr. Utley: Yes.

The Referee: Have they those records?

Mr. Utley: They were subscribers to the Blue Book, and they got the Weekly Sheets and Quarterly Sheets.

The Referee: If they have the Weekly Statements on which they relied, but do not have them with them, then we should have them in the record.

Mr. Utley: I thought this witness had been told to produce them and I thought he would.

The Referee: This is the time for the trial on the objections to the discharge.

(Testimony of Raymond W. Gordon.)

Mr. Utley: I will ask permission to go ahead and we will try to produce them.

The Referee: This is the time.

Mr. Quittner: Does the record show a Subpoena Duces Tecum to produce those documents?

The Referee: There is no subpoena in the file.

Mr. Quittner: If the creditors have the information [8] on which they relied, I prefer that Mr. Utley take them and show them to this witness and ask him if they are his Weekly Credit Reports, and I will oppose any motion for continuance for that purpose.

Q. (By Mr. Utley): How far is your office from this court, or how long will it take to produce them?

A. A half or three-quarters of an hour.

Mr. Utley: I think we can get them here and finish the case at this hearing.

The Referee: What else have you, then, for this witness?

Mr. Utley: That will be all at this time.

Mr. Quittner: While I am not going to cross-examine him now, but I intend to call him later.

The Referee: Very well, the cross-examination, if any, will be held in abeyance. Call your next witness.

Mr. Utley: I will call Mr. Mulherin.

T. M. MULHERIN

the witness, having been first duly sworn by said Referee in Bankruptcy, testified as follows:

The Referee: Your name, sir?

A. T. M. Mulherin.

Direct Examination

By Mr. Utley:

Q. What is your business or occupation?

A. I am a certified public accountant. [9]

Q. How long have you been so engaged?

A. Since the first of this year.

Q. What was your business prior to that time?

A. I was a Special Agent of the FBI.

Q. For how long? A. For 24 years.

Q. Were you engaged in accounting work with the FBI? A. Yes, I was.

Q. You were employed by the Trustee in this Matter to make an audit of the books and records of the bankrupt here, weren't you?

A. I was engaged by the Trustee to make an examination for the purpose specified in the order.

Q. I show you Trustee's Exhibit No. 1; have you seen that before?

A. I have seen one which appears to have been identical with this particular statement.

Q. Did you use that statement in any way in making your audit in this matter or in connection with your audit in this matter? A. Yes, I did.

Q. For what purpose?

A. For the purpose of comparing what the state-

(Testimony of T. M. Mulherin.)

ment showed as to the condition of the Howard E. Rogers Company with what the books and records of that company indicated as of the date of the statement. [10]

Q. Have you filed with this Court a report of your audit? A. Yes, I have.

Q. On what pages of that is reference made to this statement, this financial statement?

A. On pages 5, 6 and 7 of my report of July 19, 1953.

The Referee: What date?

The Witness: June 19, 1953—I beg your pardon.

The Referee: There is an instrument in the file, filed June 24, 1953, dated June 19, 1953, signed “T. M. Mulherin” but it is not in evidence.

Q. (By Mr. Utley): From what books or records or source did you get the information contained in your audit on pages 5, 6 and 7 of that audit?

A. Everything on pages 5, 6 and 7, the basic information is contained in the ledger of the books before you, and this one was the financial statement.

Mr. Quittner: To save encumbering the record I have no objection to the Court using the summary prepared by this auditor from the books of account.

The Referee: I can’t look at it until it is in evidence.

Q. (By Mr. Utley): Did you compare the books and records of Howard E. Rogers Company with the figures shown in the financial statement, to show whether or not the books and records reflected the figures as shown by the financial [11] statement?

(Testimony of T. M. Mulherin.)

A. Yes.

Q. And what did you find?

Mr. Quittner: Objected to, no proper foundation laid for the introduction of any evidence to test the truth or falsity of this financial statement until it has been shown that somebody has relied on the statement and that it is material.

Mr. Utley: I want to get through with Mr. Mulherin and let him go.

The Referee: You called him out of order?

Mr. Utley: Yes.

The Referee: Is this information in the written report?

Mr. Utley: Yes, it is, and at this time we offer in evidence pages 5, 6 and 7 of Mr. Mulherin's report pertaining to the financial statement in question.

Mr. Quittner: May it be stipulated that I object and reserve the right to move to strike all these questions and answers?

Mr. Utley: Yes.

The Referee: Received as Objector's Exhibit No. 2, pages 5, 6 and 7 of the Report of T. M. Mulherin, filed June 24, 1953, by reference. Proceed.

Q. (By Mr. Utley): Now, Mr. Mulherin, turning to page 6 of your report, you show certain items under the heading [12] "Assets" and in the next column you show: "Per Statement to Blue Book"; and in the next column you show "Per Books"; then under the word "Statement" you have two headings, one: "Understatement" and another

(Testimony of T. M. Mulherin.)

“Overstatement.” Will you explain what is indicated by the figures under the heading “Assets”?

The Referee: I think it explains itself.

Mr. Quittner: Are not the figures themselves self-explanatory?

Mr. Uteley: I don't want any question raised about it.

The Referee: I will give you my analysis of it, and will ask the witness: On an unnumbered page between pages 5 and 7, the one which at the top on the left end shows “—6—” he makes a comparison between the statement which is Objector's Exhibit 1 and the information which he found on the books with reference to several items of assets and liabilities shown on the statement by page 7. However, to this time I have no information as to the date of the statement itself; I have the inference that it was received by somebody on September 15, 1952.

Mr. Uteley: The statement shows it was made as of July 31, 1952.

The Referee: Yes, but the statement bears no date, but says: “Financial Condition on 7-31-1952,” and that is established now, and the statement shows “Total Assets \$143,172.94,” and the books show \$137,532.33; and then [13] Mr. Mulherin shows the “Understatement” and “Overstatement” of each of the items of assets, and approximately there was an overstatement of \$4,500.00. Now, on the liability side the statement shows a total of \$143,000 odd dollars, including a net worth of some \$57,000 odd dollars. The books, according to Mr. Mulherin's

(Testimony of T. M. Mulherin.)

analysis, show a total on the liability side of \$137,000 odd dollars including deficit in the net worth item of some \$120,000 odd dollars, and I think the statement is clear. The principal item, of course, that we may be concerned with is that of Accounts Payable for Merchandise, where the financial statement, which is Objector's Exhibit No. 1 shows \$32,000 odd dollars, and Mr. Mulherin's report shows that on the books that item was \$192,000 odd dollars.

Q. (By Mr. Utley): Mr. Mulherin, in one item opposite "Cash in Bank & on Hand" you have \$8,260.15 and "Per Books \$38,085.95." What does that mean?

A. That means checks had been issued in excess of that to the amount of \$38,085.95 on July 31, 1952.

Q. Under "Liabilities" I think it is, "Net Worth \$120,586.03," what does that mean?

A. As his Honor stated, that indicates an investment, according to the books.

Mr. Utley: I believe that is all.

The Referee: Do you desire to cross-examine at this time? [14]

Mr. Quittner: No cross-examination.

The Referee: May Mr. Mulherin be excused?

Mr. Quittner: Yes, as far as I am concerned.

Mr. Utley: Yes.

The Referee: Call your next witness.

Mr. Utley: I will call Mr. Miller.

J. E. MILLER

the witness, having been first duly sworn by said Referee in Bankruptcy, testified as follows:

The Referee: What is your name, sir?

A. J. E. Miller.

Direct Examination

By Mr. Utley:

Q. What is your address? Where do you live?

A. My residence?

Q. Yes.

A. 714 Devonshire, Oxnard, California.

Q. What is the nature of your business or occupation?

A. I am Sales Manager for Williams Farms Company, Inc.

Q. How long have you been so engaged?

A. Approximately four years.

Q. Do you know Howard E. Rogers?

A. Yes.

Q. Did you know him during the year [14-a] 1952?

A. Yes, I did.

Q. Incidentally, Williams Farms Company with which you are associated is the same Williams Farms Company that was one of the Petitioning Creditors in this proceeding?

A. Yes.

Q. Now, did you have any business transaction or transactions with Howard E. Rogers in the year 1952?

A. Yes.

Q. About when in that year?

(Testimony of J. E. Miller.)

A. Well, there would be some business dealings during the spring of 1952.

Q. Approximately—

A. Approximately in the months of April or May.

Q. Did you have any business transaction with him after September, 1952? A. Yes, I did.

Q. Approximately when was that?

A. Between the dates of November 1 and November 20, 1952.

Q. And what was the nature of the business you had with him then?

A. Between November 1 and 20, 1952, I, as Sales Manager of my company, sold to Howard E. Rogers Company a large volume of fresh carrots in crates.

Q. What was the approximate amount of that sale? A. You mean the total value? [15]

Q. Yes.

A. Between \$25,000 and \$30,000 market value.

Q. Is your company a subscriber to the Blue Book Reporter Company? A. Yes.

Q. Did they have that book at the time?

A. Yes.

Q. Do you know whether or not they had weekly financial reports of the Blue Book Reporter Company or Produce Reporter Company?

A. Yes, we receive them weekly.

Q. Do you examine them regularly when you receive them? A. Yes.

Q. Do you receive a Quarterly from the Produce Reporter Company, Quarterly Reports?

(Testimony of J. E. Miller.)

A. Yes.

Q. Do you examine them also? A. Yes.

Q. State whether or not you examined any of these documents at the time you extended the credit in November, 1952, to Howard E. Rogers Company?

Mr. Quittner: There is no foundation that there is any such document, yet.

The Referee: Proceed.

Mr. Quittner: We have our own file on these Reports. [16]

Q. (By Mr. Utley): Have you that copy with you, Mr. Miller?

A. For clarification, if need be, the Blue Book is a yearly publication and it is returned to the Reporter Company when the new one is published, and we have no back copy, but only the new one for the year 1953 on hand.

The Referee: When is the 1952 published?

Mr. Quittner: He might know, but it was April, 1952.

Mr. Utley: The witness testified as to the use of the Weekly Reports and Quarterly Reports in relation to showing any changes.

The Referee: What about those Quarterly Reports; were they returned also?

The Witness: They were and are used as supplements and the Quarterly Reports are destroyed, they being of no use when the new book comes out, because it includes all past information.

The Referee: I don't think you can go any

(Testimony of J. E. Miller.)

farther with this witness at this time. The question will arise as to whether or not you can use with this witness some copy of a Report we don't have, if there is any. Have you any other witness?

Mr. Utley: Yes, I have another witness here who dealt with Mr. Rogers and whose testimony will be similar to this witness. That is all at this time until the witness returns with that information. [17]

Mr. Quittner: If, as and when I am forced to call him as a witness I have the Reports issued. I don't know what they have seen. There might be some mistake in parts, but if we have to go forward I have in our file the copies of those reports, and I don't know whether they are the same ones other people looked at, and there are at times misleading matter in them.

Mr. Utley: I don't know how we are going to prove it other than through the witness Gordon. I think I can show by him they only printed one sheet of Weekly Reports each week and sent them out.

The Referee: Do you want to go into the second Specification in the meantime?

Mr. Utley: No, your Honor, I am not going to proceed on that, but I am relying on the first Specification.

Mr. Quittner: I have no objection to your using these documents as to putting them into evidence as copies of what he has in his file.

The Referee: It is quite clear that the Blue Book of 1952 is not material here and we are limited to

what he referred to as Quarterly Reports, and the statements.

Mr. Utley: Am I right in this, Mr. Gordon, when the Blue Book is returned if there is any change then in the rating of the persons named therein that is shown in the Weekly and Quarterly Sheets and there is no mention of it?

Mr. Gordon: That is correct. First of all the Weekly [18] Credit Sheets and the Quarterly Sheets or copies of them go into the quarter.

Mr. Quittner: As to that issue I will agree with Mr. Utley if he can produce proper evidence that the 1952 Blue Book of April is material to show the material change in the condition of the bankrupt in this case from the time of the Blue Book to the Weekly Supplement, if he can get it in properly in the Blue Book.

The Referee: Are you going to make that available to Mr. Utley?

Mr. Quittner: That instrument, yes, the 1952 Blue Book and two Weekly Sheets issued October 24, 1952, and October 31, 1952, showing change in condition, but I am only stipulating that these are duplicate copies of the Produce Reporter Company.

The Referee: All right.

Mr. Utley: Mr. Gordon, will you go back on the witness stand, please.

RAYMOND W. GORDON

the witness, resumed the witness stand, and having been previously duly sworn by said Referee in Bankruptcy, testified further as follows:

Direct Examination
(Resumed)

By Mr. Utley:

Q. I show you what purports to be the Produce Reporter Company Blue Book of 1952, consisting of one page where the [19] name of Howard Rogers appears. A. Yes.

Q. Will you circle with a red pencil the rating there? A. Yes.

Q. Does that show the rating of Howard E. Rogers Company? A. Yes, it does.

Q. As of what date?

A. The book was published in 1952, and if there were no changes thereafter, why, this is it.

Q. And it does show the rating? A. Yes.

Q. I show you what purports to be Produce Reporter Company Weekly Credit Sheet, which has the date "October 24, 1952," on it. A. Yes.

Q. Would there have been earlier Weekly Sheets than October 24, 1952? A. Yes.

Q. On September 15, 1952, if there was any change in the Howard E. Rogers Company rating when would that change be?

A. It would be the following Friday, as our mail goes to members every Friday.

(Testimony of Raymond W. Gordon.)

Mr. Quittner: Those were the only two changes made. [20]

Mr. Utley: You are stipulating there were no other changes as to Howard E. Rogers Company except as to what appear on this?

Mr. Quittner: Mr. Rogers says there were no other changes, and we so stipulate.

Q. (By Mr. Utley): Is there a change in the Weekly Sheet of October 24, 1952?

A. Yes, there is.

Q. And will you circle that with a red pencil?

A. Yes.

Q. Is there a change in the Weekly Sheet of October 31, 1952?

A. Well, it merely shows a change of address, but doesn't indicate any change in his rating.

Examination

By the Referee:

Q. On the Weekly Credit Sheet of October 24, 1952, the figure (69) and the figure (144) appear in parentheses, and then follows XXX148.

A. Yes.

Q. What does that indicate?

A. The (69) indicates reported previously to have been paid but revised to read as 69 shows, and it would be as 144; the XXX148—the 144 means reported no definite estimate as to financial worth; that is the 144. The three X rating is generally received as good in the trade, credit rating and ability;

(Testimony of Raymond W. Gordon.)

and the 148 and the 3X means general [21] appearance good with maybe some conflicting reports.

Q. If your company had known at the time this Weekly Sheet of October 24, 1952, was published that Howard E. Rogers Company was insolvent would you have rated him as good?

Mr. Quittner: Just a minute. We are assuming facts here that are certainly not in evidence, and there has been no foundation laid for that question.

The Referee: The evidence of Mr. Mulherin shows a state of insolvency at that time.

Do you object to the question?

Mr. Quittner: Yes. He didn't make these ratings.

The Referee: The objection is sustained.

Direct Examination

(Resumed)

By Mr. Utley:

Q. Do you know who made these ratings?

A. Yes; they are made in our Home Office, and I had nothing to do with that.

Q. Where is the Produce Reporter Company's home office? A. It is in Wheaton, Illinois.

Q. Do you know the page in the Blue Book showing what the various X's and figures mean?

A. Yes.

Q. Will you turn to that page?

A. Yes. [22]

Q. What page is that on?

A. I don't believe it is numbered, but it is the first page in the Blue Book.

(Testimony of Raymond W. Gordon.)

Q. That refers to the X's, doesn't it?

A. Yes.

Q. Indicating what the different number of X's show and mean? A. Yes, it reports that.

Q. Where do you find the information on the figures 144 and 148?

A. On the other side of the same page.

Q. Do you know upon what the rating as shown in that Weekly Sheet was based?

A. No, I do not, because the ratings are all made and changed in Wheaton, Illinois, and we receive a copy of these reports.

Mr. Utley: May it please the Court, we would like to offer in evidence pages 1 and 2 of the Blue Book, and the portion which Mr. Gordon marked with red pencil; I offer that portion of the Blue Book in evidence as Objector's Exhibit No. 3.

The Referee: You are offering what?

Mr. Utley: The front part of this page showing the marks and what they mean, and the X's here.

The Referee: You are offering a page from the 1952 Fruit and Produce Credit Book, issued by Produce Reporter [23] Company, which is the first page in the book, and you are offering both sides of that page?

Mr. Utley: Yes.

The Referee: The front side—for the purpose of identification—reads, at the top thereof:

“When these numerals appear in the ‘X’ Rating Column they are to be interpreted as below.”

And the reverse side of it reads:

(Testimony of Raymond W. Gordon.)

“See Preceding Page for Key to Numerals used in ‘X’ Column, and Credit Sheets.”

Mr. Quittner: I have torn out a copy from another book, if we can substitute that.

The Referee: I didn’t intend to tear it out. Is it stipulated that it is marked in pen and ink at the top of the page: “From Howard Rogers Blue Book” and may be used?

Mr. Utley: That is the same year?

Mr. Quittner: Yes.

The Referee: Is there any objection to this being offered?

Mr. Quittner: No.

The Referee: This is Objector’s Exhibit No. 3.

Mr. Utley: And we offer from that same book the rating, and it is short and we can read it into the record.

The Referee: Is there any objection to that?

Mr. Quittner: No, I have no objection to that.

The Referee: There is received into evidence by the [24] reading thereof into the record a portion of page 103 of the 1952 Fruit and Produce Credit Book, Shipper’s Edition, issued by Produce Reporter Company, which extract reads as follows:

“Rogers, Howard E. Co. (Howard E. Rogers, Prop.) 246 Wholesale Terminal Building; Phone: VAndike 4036; Long Distance TUCKER 7566; Nite GRANITE 1862 or CITRUS 3-4864, Long Distance answered by Rogers, Roberts or Nelson. Operate Seasonal Offices at El Centro, Santa Maria & Cutler. HERCO & R Brands. Drafts: Bank of America.”

(Testimony of Raymond W. Gordon.)

Now, Mr. Reporter, the next thing is a little complicated; it is:

“BBuyBR 500 TomLetPcCt”

“PIMeOGcSqNecCabRomaine”

“PpCelYbCkGreenOPPsA”

“AvBnBt.....25M XXX148.”

Mr. Utley: Now, Mr. Quittner, you offer to stipulate that any of the Weekly Credit Sheets after September 15th and prior to November do not carry the bankrupt's names except the two Weekly Credit Sheets you have mentioned?

Mr. Quittner: Yes.

Mr. Utley: I accept that stipulation.

Q. (By Mr. Utley): You have circled in red pencil on the Weekly Credit Sheets of October 24, 1952, the name of Rogers, Howard E. Company?

A. Yes.

Q. And you have explained what those figures mean? [25]

A. Yes.

Q. And you have circled the name Rogers, Howard E. Company on the October 31st, 1952 Weekly Credit Sheet?

A. Yes.

Q. And I believe you stated that was only a change of address?

A. Yes.

Q. Does your Company print more than one sheet of Weekly Credit Sheets each week?

A. Yes.

Q. And are they the same so far as you know?

A. Yes.

(Testimony of Raymond W. Gordon.)

Q. That goes to all the States in the Union?

A. Yes, to every member in the States, and in Canada.

Mr. Utley: I would like to offer these two Weekly Credit Sheets in evidence.

Mr. Quittner: I have no objection to their going in as copies sent out by his Company, which are in our file, and reserve my motion to strike unless it is shown it was communicated to these creditors and that they relied on it.

The Referee: Objector's Exhibit No. 4.

Mr. Utley: That is all.

The Referee: I show you Objector's Exhibit 3; where on that Exhibit 3 will we find an explanation of how you term 25M?

The Witness: It is shown right here on this Sheet, 1M, 5M, 10M. [26]

The Referee: You are pointing out a portion of the Sheet captioned "Estimated Financial Worth," referring to 4?

The Witness: Yes, I am.

The Referee: All right, Mr. Quittner; you may cross-examine.

Mr. Quittner: May I have the exhibits?

The Referee: Yes.

(Testimony of Raymond W. Gordon.)

Cross-Examination

By Mr. Quitner:

Q. What is the number of the stipulated entry the Court read "Howard Rogers, 25M"?

The Referee: That is not an exhibit.

Q. (By Mr. Quittnr): Referring to the statement read into evidence by the Court, and which was obtained from the 1952 Blue Book, page 103 as to Howard E. Rogers, I understood the 25M meant he had a \$25,000.00 financial rating?

A. That term is that he has that net worth.

Q. It showed he had a net worth of \$25,000.00?

A. Yes.

Q. When the Weekly Letters or Reports were issued on October 24, 1952, and the 69 appeared, and the 25M was omitted; what is your interpretation of the omission of the 25M?

A. I had nothing to do with that.

Q. You did not?

A. No; that was all done back at Wheaton, Illinois, [27] and in my opinion I would say that they found he didn't have that net worth, or maybe he had a bad deal the previous year.

Q. The omission of the 25M in the Weekly Letter means the removal of that rating? A. Yes.

Q. Again calling your attention to Objector's Exhibit No. 4 and referring to the code numbers, do any of those code numbers in any way indicate that a financial statement was ever issued on July 31st? A. No.

(Testimony of Raymond W. Gordon.)

Q. Anybody looking at those code numbers wouldn't even know that; is that right?

A. That is right.

Q. And in preparing the code numbers there is one numbered 65; that doesn't appear in there?

A. I don't see it.

Q. And 65 under Exhibit No. 3 shows what?

A. "Financial Statement Received."

Q. There is no indication, whatever, of 65 in there? A. No.

Q. And those other numbers were in no way related to the financial statement of November?

A. No, sir.

Mr. Quittner: That is all. [28]

Redirect Examination

By Mr. Utley:

Q. If your company received a financial statement on September 15th that would appear in the following Weekly Bulletin, would it not?

A. If there was any change it would show up on the following Friday.

Q. Only if there was a change?

A. Yes, that is right.

Q. Now, if your company had received a financial statement as of September 15th which indicated an insolvent condition as of July 31, 1952, would such item have appeared in your Weekly Sheet?

A. I should say definitely that it would.

Q. And how would that have been indicated?

(Testimony of Raymond W. Gordon.)

Mr. Quittner: He is now asking questions on which no foundation has been laid. There is no evidence here to show that any information was ever communicated to anybody on that July 31st statement, if issued, because they might have made the statement and not have released it.

Mr. Utley: He stated it would only have appeared in the Sheet if there had been any change.

Mr. Quittner: I object to it.

The Referee: The objection is overruled.

(The question was read by the reporter, at the request of counsel.) [29]

A. I can't answer that. I don't know how they arrived at those things back there in Illinois, where that is done.

Q. (By Mr. Utley): If your company had information to the effect that a person was insolvent they would not have, under date of October 24, 1952, rated him as good?

A. No, it would be definitely shown that they were insolvent.

Q. Where a person had been rated in the Blue Book as having a credit of 25M or \$25,000, and after that there is a change in some other respect the elimination of the 25M wouldn't necessarily mean he wasn't good for the \$25,000 credit, would it?

A. I would say not.

The Referee: I don't understand the question or the answer. Do you mean to say, Mr. Utley, if one rating showed 25M and the next rating didn't show

(Testimony of Raymond W. Gordon.)

any M rating of any kind the seller may presume he still has the 25M credit or rating?

Mr. Uteley: I will ask him.

Q. Well, when you print these Weekly Credit Sheets is it a fact or is it not a fact that they show only the changes made that are shown in the Blue Book?

A. That is corrected in the previous week, any changes, whether it be the address, telephone number or financial rating.

Q. Then, if Mr. Rogers' rating in the Blue [30] Book appeared to be 25M and your company had received subsequent information that they would not change that figure there would be no mention of the 25M in the Sheets? A. That is right.

Examination

By the Referee:

Q. I don't understand that, and the witness testified he didn't know how these symbols were arrived at; that is, you find in one of these sheets a fragmentary rating and in another one everything is covered, and if you want to know the whole picture you have to go back through all the sheets and get the whole story, and I doubt if that is the way this company does its business. Are you saying, sir, that a rating as it appears in a Weekly Credit Sheet is not complete and doesn't cover the whole rating?

A. It shows the exact rating at the time the sheet is made out, and also from the Blue Book.

Q. But you have just testified that one can still assume after reading the rating on Objector's Ex-

(Testimony of Raymond W. Gordon.)

hibit No. 4 that this man still had a net worth of \$25,000? A. No.

Q. You don't mean to say that?

A. No, that is not correct.

Q. When a rating is given it is a complete rating?

A. It is as complete as they can get it.

Q. But they didn't put out a partial rating on a man as to whether he is good? [31]

A. Well, in some ratings they have the financial net worth, the moral rating included.

Q. But that is not a complete rating as of the date issued; is that correct?

A. Yes, that is correct.

The Referee: Go ahead.

Q. (By Mr. Utley): Is it not a fact that the Weekly Sheet only shows the changes from the rating in the Blue Book? A. Yes, that is correct.

Q. Then if in the Weekly Sheet there was an absence of any rating like \$25,000 or \$10,000 wouldn't that indicate that the \$25,000 had not been changed?

A. Well, I would say that if the financial rating had been taken out there was a reason for it.

Q. When there has been a change on a Weekly Sheet you don't put the entire rating of that person in the Weekly Sheet, do you?

A. Well, the financial and moral rating would be there.

Q. Always?

A. Yes, if there was any change of the rating it

(Testimony of Raymond W. Gordon.)

would be complete to put the financial and moral rating.

Q. If you had information showing a person was insolvent you would never rate him as good, would you?

The Referee: You are putting words in the mouth of [32] the witness.

Mr. Utley: I don't know how I can prove it, then.

The Witness: I don't know how that is done.

The Referee: Get somebody here from Wheaton, Illinois, then, if that is necessary.

Mr. Utley: That is all.

Recross-Examination

By Mr. Quittner:

Q. The symbol 69 appears in the Weekly Sheet?

A. Yes.

Q. What does it mean?

The Referee: I can read it.

Mr. Quittner: All right.

The Referee: "69" is: "Reported previous report should be revised to read."

Mr. Quittner: That is all.

The Referee: Any further questions, Mr. Utley?

Mr. Utley: No further questions, but I will call Mr. Miller back to the witness stand.

The Referee: We will take a short recess.

(Immediately following the five-minute recess the hearing proceeded, as follows.)

The Referee: All right, Mr. Miller, come forward and take the witness stand. [33]

J. E. MILLER

having been previously duly sworn by said Referee in Bankruptcy, testified further as follows:

Redirect Examination

By Mr. Utley:

Q. I am going to show you here, Mr. Miller, the Blue Book of Produce Reporter Company of 1952; is that the book you have heretofore referred to of the Produce Reporter Company?

A. That is a copy of it, yes.

Q. Calling your attention to page 103, I will ask you to read what follows that, which is circled in red pencil under the name of Howard E. Rogers Company.

A. All right.

Q. Have you seen that before?

A. Yes, I have.

Q. That was printed in the 1952 Blue Book your company had?

A. Yes, it was.

Q. Now, I show you the Weekly Credit Sheet of Produce Reporter Company under date of October 24, 1952, and call your attention to that portion circled in red pencil—this is Objector's Exhibit No. 4—under the name Howard E. Rogers Company; have you seen that before?

A. Yes, I have.

Mr. Quittner: Have you seen this exact paper and [34] Exhibit before?

The Witness: Let me see if I have seen a copy of it. Yes.

Q. (By Mr. Utley): Did the copy you saw contain the same information you see there now?

A. Yes, it did.

(Testimony of J. E. Miller.)

Q. Showing you the same Exhibit, Weekly Credit Sheet of October 31, 1952, I call your attention to the name Howard E. Rogers Company circled in red pencil. Did you see that before?

A. I have seen a copy of that Report.

Q. Did you see all of these documents prior to the time of extending credit to Mr. Rogers in November, 1952?

A. Yes.

Q. Did you place any reliance upon those?

A. Yes, I did.

Q. What reliance did you place on them in extending credit to Howard E. Rogers Company?

A. We placed a great deal of reliance or almost entire reliance on that and on our customers based upon the reading of the ratings in the Blue Book, and we refer to these ratings when we sell to our customers.

Q. And are you the sales agent for your company?

A. Yes.

Q. Does that duty fall on you?

A. Yes. [35]

Q. If you had known at the time you sold merchandise to him on credit in November, 1952, that he on the 31st day of July, 1952, showed an insolvent condition would you have extended him credit?

A. No, sir.

Q. In November, 1952, if you had known that he owed large sums of money as shown by Mr. Mulherin's testimony would you have extended him credit?

A. No, sir.

Q. You have heard Mr. Mulherin's testimony

(Testimony of J. E. Miller.)

here? A. Yes, I did.

Mr. Utley: You may take the witness.

Mr. Quittner: I move to strike this testimony on the ground that the witness has not shown in any way that the information contained in the financial statement of July 31, 1952, has ever been communicated to him in any manner, whatsoever, and there is a variance between the pleadings and the proof as to relying on the financial statement.

The Referee: The motion is denied. Proceed.

Cross-Examination

By Mr. Quittner:

Q. When did you first find out that a financial statement had been made by Howard E. Rogers Company to Produce Reporter Company as of July 31, 1952?

A. After we had lost a considerable sum of money he owed us. [36]

Q. Was that after the bankruptcy was filed here? A. Yes, it was.

Q. You are sales manager for the company you are with? A. Yes.

Q. How many employees does your company have?

A. About 10 regularly, and at times as many as a hundred.

Q. Have you a Credit Department?

A. We have an Accounting Department or Book-keeping Department.

(Testimony of J. E. Miller.)

Q. Have you a credit man?

A. He is the bookkeeper and he may be considered as such.

Q. He passes on all the credits?

A. No, not necessarily all of them.

Q. Do you pass on the credits?

A. There is within my jurisdiction a certain amount of option as to whether we sell to one or to another dealer.

Q. It is not your duty, then, to pass upon the credit of anybody, but that is by another employee?

A. No, I would not say that.

Q. What do you say?

A. I say that I am more than partially responsible for the credit, that is, as to whom we sell, and after that buyer is once sold it is handed to the Bookkeeping Department. [37]

Q. In this particular case it was somebody other than yourself who examined the Blue Book?

A. No, I did that, and others there did that also.

Q. Who else?

A. The bookkeeper, and the owner of the business himself, who made the final decision as to the extension of credit.

Q. Are you talking about this particular instance?

A. There was no particular instance, but as to a group I did so myself.

Q. In what form did you communicate it to your employer?

(Testimony of J. E. Miller.)

A. I didn't communicate it to him. That was not necessary, unless something was different.

Q. Are you a member of the company you are with? A. No, I am not.

Q. You are only an employee? A. Yes.

Q. You didn't communicate to anybody that Mr. Rogers' credit was good and that the company you are with should ship to him?

A. No, that is left to my discretion.

Q. And you merely shipped or had the merchandise shipped to him? A. Yes.

Q. Without consulting with anybody? [38]

A. That was not necessary unless there was a change in the report.

Q. How long have you been passing upon credits in the produce business?

A. Since early in 1946.

Q. I would like to ask you this hypothetical question: Let us assume that the October 24th Reporter Produce Sheet came out and stated under the name of Francis F. Quittner here in Los Angeles both symbols 69, 144, triple X 148; will those symbols tell me when I issued a financial statement?

A. Those symbols do not indicate that you issued a financial statement.

Q. Tell me what my net worth was on October 24, 1952?

A. Those symbols do not show that here.

Q. They do not indicate any net worth?

A. No, sir, they do not.

Q. Looking at those symbols again, will you tell

(Testimony of J. E. Miller.)

me what Rogers' net worth was on October 24, 1952?

A. There are no figures here to indicate completely what his net worth was then.

Q. You don't know whether he was solvent or insolvent on that date?

A. I think you do not understand the full value of these figures.

Q. No, answer the question: Could you tell [39] me whether he was solvent or insolvent on that date, based on those symbols? A. Yes.

Q. Then, tell me what was his financial condition on that date?

A. I do tell you that he was insolvent on that date.

Q. How can you tell me that?

A. As the Produce Reporter Company had done it previously.

Q. You blame the Produce Reporter Company for not giving you full information or sufficient information?

A. I think that could be boiled down to be right.

Q. But you did look at the symbols therein and shipped to him without further investigation?

A. Yes.

Q. And the numeral 69 showed the previous report 25M was changed? A. Yes.

Q. And showed Pina & Sons 100M; that means if you are going to ship to them they are worth at least \$100,000? A. Yes.

Q. And when the 69 appeared there you referred back to the Blue Book, and it showed that the 25M

(Testimony of J. E. Miller.)

was reduced? A. Yes, it was changed.

Q. Changed to what?

A. Changed to another series of numerals. [40]

Q. But there is no M rating there?

A. No.

Q. And you don't know whether his financial net worth was \$1 or \$1,000? A. That is correct.

Q. The other numeral credit there is no estimate of net worth? A. Other than itself, no.

Q. Is that the 148 following? A. No, 144.

The Referee: May I see what the symbol is?

Mr. Quittner: Yes.

The Referee: Let me read it right into the record (reading):

“69: Reported previous report should be revised to read”——

“144: Reported no definite estimate as to financial worth.”

“XXX: Good.”

“148: Have conflicting reports—rating indicates reported general experience.”

The only thing which may be a little uncertain is whether there is any significance to the fact that the 69 is in parentheses, and the 144 is in parentheses. I don't know the explanation for that.

Mr. Quittner: Neither do I.

The Referee: Proceed.

Q. (By Mr. Quittner): The XXX's on there refers to [41] character? A. Yes.

Q. And not to anything connected with financial condition? A. Yes, it does in a manner.

(Testimony of J. E. Miller.)

Q. It shows he is credited as being a moral person?

A. Yes, and it has a sense of his ability to pay.

Q. You sometimes see 1M and 1X?

A. Yes.

Q. That means 1X gives you a lot of trouble and don't pay on time? A. Yes, slow pay.

Q. Have you had any previous experience with Mr. Rogers prior to this November shipment?

A. Yes.

Q. His general reputation in the trade was truly XXX, wasn't it? A. Up to that time.

Q. So far as you knew?

A. Yes, with the possible exception now and then.

Q. But generally you regarded him as XXX?

A. Yes.

Q. And to your knowledge at that time he was considered XXX; is that correct? A. Yes.

Q. There was nothing—that is, he had not [42] stolen anything or done anything of an immoral nature; is that right? A. That is right.

Mr. Quittner: That is all for this witness.

Mr. Utley: No further questions.

The Referee: Call your next witness.

Mr. Utley: We will call M. E. Nelson.

M. E. NELSON

the witness, having been first duly sworn by said Referee in Bankruptcy, testified as follows:

The Referee: May we have your name, sir?

A. M. E. Nelson.

Direct Examination

By Mr. Utley:

Q. And where do you live?

A. 420 East Hickory Street, Lompoc, California.

Q. What is the nature of your business or occupation?

A. I manage and direct the operation of a vegetable business and handle the sales of it.

Q. Do you know Howard E. Rogers here?

A. Yes, I do.

Q. How long have you known him?

A. Three or four years.

Q. Have you had business dealings with him in the sale of vegetables and fruit to him?

A. May I say as sales manager I took over that job [43] October 1, 1951, and I have known him before that time, but actually from that time until early October, 1952, I had not sold him anything, but my company did.

Q. What company did?

A. California Vegetable Growers.

Q. Are they a creditor here?

The Referee: They are not set up here in the Schedules.

Mr. Utley: The Schedules refer to the Petition-

(Testimony of M. E. Nelson.)

ing Creditors and notes on page 3 that you were engaged in the sale of vegetables and fruit.

The Witness: Yes.

Mr. Quittner: I move to strike that as to one individual and one item. We can't meet any such pleading.

The Referee: What do you say, Mr. Utley?

Mr. Utley: I am willing to stand on the language of it.

The Referee: The motion is granted. Proceed.

Mr. Utley: Does your Honor mean by that to say we can't show by this witness his dealings with the bankrupt?

The Referee: That is right.

Mr. Utley: At this time we would offer to prove by this witness that he was sales manager for his company, a creditor of this bankrupt; that he——

Q. Over what dates did you make the sales to Howard E. Rogers? [44]

A. From October 2nd through November 11, 1952.

Q. During that time you sold Howard E. Rogers or Howard E. Rogers Company how much in dollars and cents?

A. \$12,269.19 worth of vegetables and produce, mostly crated carrots.

Mr. Utley (Continuing): ——that he extended credit to Howard E. Rogers, and in doing so he relied on the credit rating shown by the Blue Book of Produce Reporter Company heretofore referred to and the page referred to in the 1952 issue of that

(Testimony of M. E. Nelson.)

book of Produce Reporter Company and upon the Weekly Credit Sheets subsequently issued by said company, and that his company was a subscriber to that service, and that in extending this credit he relied upon the rating therein; and that had he known at the time of extending such credit that Howard E. Rogers was insolvent he would not have extended that credit.

The Witness: That is right.

The Referee: Is there any objection to the offer of proof?

Mr. Quittner: Yes, I object to it as being incompetent, irrelevant and immaterial and not in accordance with the pleadings before this Court.

The Referee: The objection is sustained. Step down. Call your next witness.

Mr. Utley: At this time we ask, in the light of the Court's ruling here, we ask permission to take the deposition [45] of some person of Produce Reporter Company at its home office in Wheaton, Illinois, for the purpose of establishing the fact that this company did receive this financial statement from Mr. Rogers and that the rating they placed in their Blue Book, in their Weekly Credit Sheets thereafter was based upon the information received in this financial report of Howard E. Rogers showing a condition existing as of July 31, 1952.

Mr. Quittner: We will oppose that motion, if the Court please.

The Referee: On what grounds?

Mr. Quittner: They assume, for the purpose of

argument here, that a deposition would produce such testimony as the symbols themselves show, and as the witness representing the Produce Reporter Company earlier testified to, that a number of symbols relate to a financial statement they had, and further assuming the testimony would show that these symbols were based upon a financial statement, no reliance could be placed by any creditor for the extension of credit.

The Referee: The motion is denied. You may call your next witness, Mr. Utley.

Mr. Utley: That is all.

The Referee: Proceed, Mr. Quittner.

Mr. Quittner: If he is going to take a deposition I would like——

The Referee: No, I said that Mr. Utley's motion is [46] denied. Proceed.

Mr. Quittner: Do you rest?

Mr. Utley: Yes.

Mr. Quittner: At this time we would like to move to dismiss Specification Number I—Number II having been already abandoned—on the ground of there being no proof by any creditor here that he relied on the financial statement of July 31st, as set forth in the Specification, and there is no reason why the bankrupt should now go forward with any testimony, because there is no testimony to meet and overcome, and we ask that the Specification be not sustained.

The Referee: The motion is denied. The instrument which is Objector's Exhibit No. 3, being a page

from the 1952 Blue Book of the Produce Reporter Company, on the reverse side thereof, as explained on page 6, I think it is necessary to have that in the record so that we may fully understand these symbols and the explanation contained on page 6.

Mr. Utley: If that is necessary I move that it go in as an exhibit.

The Referee: Have you seen it, Mr. Quittner?

Mr. Quittner: Yes.

The Referee: Then, may it be stipulated that the reporter at this point may copy into the record the matter contained on page 6 of the Blue Book, under the caption: [47] "Moral Responsibility." Is that stipulated?

Mr. Quittner: So stipulated.

Mr. Utley: So stipulated.

The Referee: The reporter will copy that page in at this point.

Page 6 of the Blue Book.

"Moral Responsibility.

"Moral Responsibility is the most important part of every deal—first last and all the time.

"Neither the words in any contract, nor the contract itself are nearly as important as the moral responsibility of the parties to that contract.

"Without the willingness and ability to complete the deal, on the part of both parties, there is no Real Deal.

"Therefore, Blue Book Moral Responsibility ratings are a blend of all factors of Honesty, Integrity and Ability to capably perform a service.

“Neither laws, rules nor regulations can make a man honest.

“Honest intentions or sound moral responsibility methods are what you should give first consideration to, in every deal.

“Be safe—not sorry. Check the latest Blue Book rating before confirming.”

Mr. Quittner: If the Court please, if I may address the Court on this triple X, since I see what the Court has in [48] mind; the statement as to the three X's has no reference to figures in the statement of July 31st.

The Referee: I don't want to indicate that I am forming any conclusion, but I want that to be in the record somewhere here.

Mr. Utley: Does your Honor have the Statement of Affairs in the file?

The Referee: Yes (passing document to Mr. Utley).

Mr. Quittner: I will call Mr. Gordon.

The Referee: Come forward, Mr. Gordon, and take the witness stand. You have been sworn.

RAYMOND W. GORDON

thereupon testified further as follows:

Direct Examination

By Mr. Quittner:

Q. Mr. Gordon, would you interpret for the record here in the statement the triple X in your Blue Book as relating to the bankrupt; the three X's

(Testimony of Raymond W. Gordon.)

mean good morally, good appearance, integrity and good pay, and that has no relation, whatever, to the financial condition of the company, does it?

A. No, sir.

Q. Is it possible for a man or a company to have a net worth of \$100,000 and still get a 1X rating?

A. Yes.

Mr. Quittner: That is all. [49]

Mr. Utley: No further questions.

Mr. Quittner: We will call George K. Redpath.

GEORGE K. REDPATH

the witness, having been first duly sworn by said Referee in Bankruptcy, testified as follows:

The Referee: What is your name?

A. George K. Redpath.

Direct Examination

By Mr. Quittner:

Q. What is your business?

A. Buying accounts receivable.

Q. With what organization are you connected?

A. Produce Clearings.

Q. In that capacity, in buying accounts receivable, have you had the occasion to use the Blue Book and records of Produce Reporter Company?

A. Yes, I have.

Q. Are you familiar with the symbols used by Produce Reporter Company in its Blue Book?

A. Yes.

(Testimony of George K. Redpath.)

Q. I would like to show you Objector's Exhibit No. 4 and call your attention to the circled "(69)" "(144)" and "XXX148." A. Yes.

Q. Are you able to interpret those symbols?

A. Yes. [50]

Q. And as a credit man do they indicate to you whether or not you as a credit man could rely upon those symbols for the purpose of their exact credit meaning and credit rating? A. Yes.

Q. What would be your interpretation as to whether or not this man was a good or a bad credit risk?

A. I would not grant credit on that until I had more information.

Q. Do those symbols in any way indicate to you that a financial statement has actually been issued?

A. No.

Q. You can't tell from that? A. No.

Q. Does the removal of the 25M indicate anything to you? A. Yes, it does.

Q. What?

A. That he had a loss of money.

Q. If an account receivable of Howard E. Rogers had been offered to you for purchase would you have purchased it based on that? A. No.

Mr. Quittner: No further questions. [51]

Cross-Examination

By Mr. Utley:

Q. The "XXX148" doesn't indicate an insolvent condition? A. No; it is very meager.

(Testimony of George K. Redpath.)

Q. It shows him classed as "Good."

A. No, I wouldn't say that. It would show to me that he had been a responsible produce man, but doesn't show me what he was then worth, and that condition changes very rapidly.

Q. But you didn't interpret it as meaning his present condition?

A. No, but I wouldn't put out my money on that type of credit rating.

The Referee: This is not a case of his private interpretation. No subscriber of the Blue Book has any right to place interpretation on the symbols therein other than that indicated by the publisher of the Blue Book itself.

The Witness: No.

The Referee: Anything further?

Mr. Utley: That is all.

Mr. Quittner: That is all.

The Referee: Call your next witness.

Mr. Quittner: No further testimony.

Mr. Utley: May it please the Court, I am going to call a somewhat unusual matter to your Honor's attention. [52]

The Referee: Not unless you are going to put it in evidence, you can't.

Mr. Utley: This is by way of a motion. I have just been handed a financial statement issued directly to the Travelers Indemnity Company of Hartford, Connecticut, under date of May 31, 1952, showing a very solvent condition and total net worth of approximately \$90,000 by Howard E. Rogers, which financial statement, I am told, was issued to

the Travelers Indemnity Company for the purpose of securing a bond in this business, and I have just examined the Statement of Affairs of the bankrupt here, and under the heading——

The Referee: If you are going to put something in evidence, put it in, and don't argue it until it is in evidence.

Mr. Utley: I am going to move for permission to amend the Specifications of Objections to include the issuance of a false financial statement to the Travelers Indemnity Company by this bankrupt under date of May 31, 1952, and signed by Howard E. Rogers under date of June 24, 1952, and which was issued for the purpose of securing a bond from the Travelers Indemnity Company, and call your Honor's attention to the fact that the Statement of Affairs doesn't disclose to the Trustee in Bankruptcy or to any creditor the fact that he had issued this financial statement for that purpose, and I just heard of it a few days ago when the Travelers Indemnity Company's representative called me up and informed [53] my secretary that they had such statement, and I asked them to be here today with it, and had I known about it at the time I prepared the Specifications of Objection I most certainly would have included it therein; and I will state very briefly and very plainly that——

The Referee: Is that your motion?

Mr. Utley: Yes.

The Referee: Is there any objection?

Mr. Quittner: Yes, we object on the ground that it is attempting to introduce a new cause of action.

The Referee: You have not as yet stated you have a cause of action in that respect.

Mr. Utley: We will show by this witness that they relied on this financial statement.

The Referee: Did they pay for the bond?

Mr. Utley: They are a creditor here.

The Referee: If he got the bond on credit you might have a cause of action; if he didn't, I don't know that you have any cause of action.

Mr. Utley: We know the bonding company lost money on the bond, and would not have written the bond if they had known his true financial condition.

The Referee: But you still might not be under Section 14 (c). You might be under Section 17, I don't know; but the immediate question is whether you should be given leave to amend. Ordinarily it is elementary that you can't amend by [54] introducing a witness: the matter requires the construction of the extent of Section Fifteen, which says:

"The Court may, upon the application of parties in interest who have not been guilty of laches, filed at any time within one year after a discharge shall have been granted, revoke it if it shall be made to appear that it was obtained through the fraud of the bankrupt, that the knowledge of the fraud has come to the petitioners since the granting of the discharge and that the actual facts did not warrant the discharge."

I think Referee Hunt had something along this line not very long ago where before the discharge was entered it appeared the Trustee or Creditors had been misled by statements of the bankrupt and

had not known of an existing ground of objection. In that event there is no use in our delaying a ruling on the Specification already before the Court. This is an entirely distinct situation. So I will rule——

Mr. Utley: I would like your Honor to rule on this before passing on the other matter.

The Referee: I can't now grant or deny your motion at this moment and I am going to rule on Specification One here while it is fresh in our minds. I will rule on your motion, but will get this out of the way first. I don't want to take snap judgment on it, because it is rather an involved situation; it is not the ordinary financial statement case we get here in the run-of-the-mill [55] proceeding. I would like to discuss it with you, and I am going to do so at 2 o'clock this afternoon, if you can bring the witness here, and if you can produce any citation of authority for such procedure on an amendment.

Mr. Utley: I am leaving next week.

The Referee: Then, come back at 2 o'clock this afternoon. I will keep this Blue Book here. The matter is now continued to 2 o'clock this [56] afternoon.

Friday, December 11, 1953—2 P.M.

The Referee: Howard E. Rogers. Is there any further evidence?

Mr. Utley: No further evidence, may it please the Court; and on that motion I made for permission to file an amendment your Honor asked for

citation of authority to do so, and I have found a case in 143 Federal Second, page 442, which held in effect that a creditor who found a ground for objection to discharge before the discharge was granted, I believe, or it mentioned the fact that he might within one year set it aside. I think it was a case Mr. Laugharn had, and it held that you could amend, and that it was within the jurisdiction of the Court to amend.

The Referee: I think that on this motion we should have a record, and I am going to suggest that if you want to press the motion you file a written petition for leave to amend, and verify it, setting up all the factual grounds on which you believe you have the right to amend, and furnish counsel a copy of that, and maybe counsel will stipulate that we might now proceed to rule on it.

Mr. Quittner: I am willing to do that, but I want to get the motion first, if I may. My client doesn't reside in the City of Los Angeles now, and I do not have the statement before me and I would like to see it and maybe put it in evidence as an exhibit. [57]

Mr. Utley: I haven't it here with me now, but did have it this morning.

The Referee: I repeat that I think a matter which is as important as this is to the creditors and to the bankrupt it should be presented by formal papers and not by an oral motion at this hearing, where Specifications of Objection are already on file. I think Mr. Utley should file a verified petition and you, Mr. Quittner, should file an answer, and

then we will rule on it, but not rule on it today. First of all, Mr. Utley will not only have to set up the facts which he believes he can prove in his petition, but he will have to show that they constitute a ground of objection to discharge, of which I have some doubt at this time, unless he got credit on the premium for the bond. I don't know, but it might come under Section Seventeen.

Well, let's see how far we can get along on the case in chief, and then decide as to the time on the other phase of it.

Well, gentlemen, we have an entirely new picture situation here. We have heard many objections to discharge on the ground of false financial statements, but never one like this one or even remotely like this one.

This is a summary of the facts which are in the record:

Mr. Rogers unequivocally made a financial statement and it was as of July 31, 1952, which was received on [58] September 15, 1952, by the publisher of this Blue Book. At that time Mr. Rogers had a rating in the Blue Book, and Mr. Utley's witness, Mr. Gordon, testified that any change in the rating that might be suggested by a financial statement coming into the hands of the publisher of the Blue Book would appear in one of the Weekly Credit Sheets in the week of the receipt of the statement; but, apparently, it didn't work out quite that way, because the change in the rating was made October 24, 1952, and then the only change was on

October 31, 1952, which has been referred to as a change of address; but is that all that it is? This is what it literally says:

“Rogers, Howard E. Co. (Howard E. Rogers, Prop.), 246 Wholesale Terminal Building.” The 69 is:

“Reported previous report should be revised to read.” Does that eliminate the previous rating?

Mr. Utley: I don't think it was the intention of that to eliminate the rating.

The Referee: Well, in any event, after the receipt of these Weekly Reports the only creditor whose case has been established by the evidence, if that case has been established by the evidence, is that he sold Mr. Rogers a substantial amount of merchandise on credit, and the testimony is that the sales manager or credit manager of that firm relied on the rating as it was revised by the papers which are Objector's Exhibit No. 4. Mr. Utley, do I have reasonable [59] ground for believing that Mr. Rogers obtained property on credit by making or publishing a false financial statement? There is not any question but that from the evidence here the finding must be that the statement he did give was false. There is no showing that he was asked for the statement. He did give it and he did give it to Produce Reporter Company, the publisher of the Blue Book. What influence, if any, did it have on the publisher of the Blue Book in making the revised rating? The statement shows a net worth of \$57,000. The odd thing is that the revised rating eliminates the estimated net worth of \$25,000 which

had theretofore been assigned to Mr. Rogers. What is the exact language of that? The rating refers to situation No. 144, and that is: "Reported no definite estimate as to financial worth."

In other words, the Blue Book didn't believe Mr. Rogers' statement. The statement showed a net worth of \$57,000 and that said he has no financial worth or reported no definite estimate as to financial worth. Now, Mr. Rogers did not have to give this statement, so far as we know. It could have been a voluntary act on his part. The statement was false. If it had been true it would have shown a deficit of something like \$100,000. Now, if it had shown that deficit, what kind of a report would the Blue Book people have given? There are a number of situations that may be reported on by the reporting company. In other words, their number "106" says: "Reported voluntary petition in bankruptcy filed." [60] "107" says: "Reported involuntary petition in bankruptcy filed." "108" says: "Reported liquidating." "109": "Reported business is in hands of creditors." "110": "Reported insolvent." If the statement had shown insolvency would the Blue Book have rated him "110"?

One wonders, Mr. Utley, why the creditor who relied or extended credit in the face of the report which it had before it, which said, "Reported no definite estimate as to financial worth," particularly where theretofore he had had a report as to financial worth in the sum of \$25,000.

Now, let's see about these "XXX"s: The quota-

tion "XXX"s means "Good"; and that is further explained on page 6 of the Blue Book, where it says:

"Moral Responsibility

"Moral responsibility is the most important part of every deal—first, last and all the time.

"Neither the words in any contract, nor the contract itself are nearly as important as the moral responsibility of the parties to that contract.

"Without the willingness and ability to complete the deal, on the part of both parties, there is no Real Deal.

"Therefore, Blue Book Moral Responsibility ratings are a blend of all factors of Honesty, Integrity and Ability to capably perform a service.

"Neither laws, rules nor regulations can make a man honest. [61]

"Honest intentions or sound moral responsibility methods are what you should give first consideration to, in every deal.

"Be safe—not sorry. Check the latest Blue Book rating before confirming."

So, it would appear as has been suggested here that the triple X rating had nothing to with financial ability. Therefore, Mr. Utley, I say I wonder why your people were overlooking the rating to extend credit of approximately \$40,000.

Here is our problem in another point, I think. Section 14(c) says that if the Objector shall show reasonable ground for believing that the bankrupt has committed any of the acts which, under sub-

division c, would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt.

Are there here reasonable grounds for believing that if the bankrupt's statement had been true rather than false the publisher of the Blue Book would have given him the rating of 110, which shows "Reported insolvent," and if so, is there reasonable grounds for believing that the creditor would not have granted credit? I think that is the summary of it, and I would be glad to hear what you gentlemen have to say. Mr. Utley, you have the first word on it.

Mr. Utley: I asked the witness if he had known the [62] bankrupt was insolvent would he have extended him credit, and he testified that he would not have done so, and had the bankrupt reported to the Reporter Company the true situation then we have a right to assume that would have been their report. As a matter of fact, it is not before the Court, but subsequently that was reported——

The Referee: Well, you must not say that, Mr. Utley; there is no evidence to contradict it, and he was hopelessly insolvent at the time of making the report, but showed himself to have a net worth of \$57,000. There is no question about the fact that anybody in giving a statement to the Blue Book does it for the very purpose of obtaining credit, just like they do in giving a financial statement to Dun & Bradstreet.

Of course, the mysterious thing about the whole

case is that after receipt of the financial statement showing a net worth of \$57,000 the Blue Book withdraw its financial rating of \$25,000. In other words, there must have been some factors known to the Blue Book which cast a doubt upon that statement of \$57,000; but the point I am making is this:

Is there, nevertheless, reasonable ground here to believe that if the statement had shown the insolvent condition which actually existed the Blue Book, in the ordinary course of its business, would have rated him 110 instead of 148? [63]

Mr. Utley: I think they most certainly would have.

(Argument by Mr. Utley.)

The Referee: All right, Mr. Quittner.

(Argument by Mr. Quittner.)

The Referee: All right, gentlemen, I have come to the conclusion that there are considerable grounds for believing that the bankrupt has committed an act which would be a bar to his discharge, and that the bankrupt has not met the burden imposed upon him by Section 14(c) of the Bankruptcy Act to prove that he did not commit the act. I say there are reasonable grounds for believing that, for these reasons: The statement was published, and it has long been settled, I am saying, that a financial statement given to a credit reporting company is a statement within the meaning of Section 14(c). There are here definitely reasonable grounds for believing that if this financial statement had been true and had shown a deficit of

\$100,000 that the reporting agency would have transmitted the code number 110 to its subscriber, which would have meant it was reporting that the bankrupt was insolvent and there was reasonable ground for believing that if the credit manager who is here involved had been familiar with code number 110 he would not have extended the credit by which the bankrupt did obtain property on credit by making and publishing a false financial statement as to his financial condition.

How much time do you want, Mr. Utley, to file your [64] motion to amend?

Mr. Quittner: Do you still want to file it?

Mr. Utley: I may not wish to file it.

The Referee: There is going to be one result, because I shall not enter any order until after the Specifications are on file or hereafter filed are heard. So, if any other Specifications are filed I will hear them before any order is made. I will give you a deadline within which you will have to file your motion, and set it for hearing. Mr. Quittner wants to be heard, very definitely, on the motion itself. We can hear the motion and if it is granted we can proceed immediately to a hearing on the merits.

Mr. Quittner: I would like to have them heard separately.

The Referee: I think that would be a better way. There is no use of having the witness here or even the bankrupt here on the motion, because it will have to be heard on the pleadings. We will not

hear any evidence on the motion. The motion must be filed and set it for hearing sufficiently long in advance in order to prepare a reply. How much time do you want?

Mr. Quittner: 15 days.

The Referee: When filed Mr. Utley can give notice of the date of hearing, which will be not less than 15 days.

Now, so far as the findings on this are concerned, Specification Number One is sustained. Specification Number [65] Two is dismissed. The Objector may have to January 5th, 1954, in which to file a motion for leave to file an additional Specification of Objection, and if filed the bankrupt is to have 15 days in which to reply. That is all at this [66] time.

Certificate

I, E. B. Bowman, Official Court Reporter for the Honorable Benno M. Brink, Referee in Bankruptcy, at Los Angeles, California, do hereby certify that I attended and reported in shorthand the testimony adduced and proceedings had before said Referee in Bankruptcy on the 11th day of December, 1953, in the Matter of Howard E. Rogers, dba Howard E. Rogers Company, Bankrupt, In Bankruptcy No. 55,620-BH, at the hearing on Objections to Discharge of said Bankrupt, and that the foregoing 66 pages comprise a full, true and correct transcript thereof, and a full, true and correct transcription of my shorthand notes of said hearing.

Dated at Los Angeles, California, this the 27th day of September, 1954.

/s/ E. B. BOWMAN,
Official Court Reporter.

[Endorsed]: Filed September 29, 1954. [67]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 40, inclusive, contain the original

Creditors' Petition;

Order of General Reference;

Adjudication of Bankruptcy;

Specifications of Objections to Discharge;

Findings of Fact and Conclusions of Law Re:
Specifications of Objection to Bankrupt's Discharge;

Order Denying Discharge of Bankrupt;

Petition of Bankrupt for Review of Order of Referee Denying Discharge in Bankruptcy;

Referee's Certificate on Petition for Review of Order Denying Discharge;

Order Affirming Order of the Referee Denying Bankrupt a Discharge;

Notice of Appeal;

Appellant's Statement of Points on Appeal;

Designation of Record on Appeal;

Appellant's Additional Designation of Record on Appeal;

which, together with the original Objector's Exhibits Nos. 3 and 4; and 1 volume of Reporter's Transcript of proceedings had on Dec. 11, 1953; all in said cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 31st day of March, 1955.

[Seal] EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14707. United States Court of Appeals for the Ninth Circuit. Howard E. Rogers, Doing Business as Howard E. Rogers Co., Appellant, vs. George Gardner, Trustee in Bankruptcy of the Estate of Howard E. Rogers, etc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 1, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14707

HOWARD E. ROGERS,

Appellant,

vs.

GEORGE GARDNER, Trustee in Bankruptcy of
the Estate of HOWARD E. ROGERS, dba
HOWARD E. ROGERS CO., Bankrupt,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY AND DES-
IGNATION OF RECORD ON APPEAL

To the Clerk of the Above-Entitled Court: To
George Gardner, Trustee in Bankruptcy
Herein; and to Ernest R. Utley, His Attorney:

I.

Comes now the above-named Appellant and formally adopts as his Statement of Points on Appeal, the said Statement heretofore filed in the District Court of the United States, Southern District of California, Central Division, in Bankruptcy No. 55,620-BH, which said Statement appears in the typewritten transcript of record herein.

II.

Comes now the above-named Appellant and hereby designates as the record on appeal those

portions of the record and proceedings referred to in the "Designation of Record on Appeal" and "Appellant's Additional Designation of Record on Appeal" heretofore filed in the District Court of the United States, Southern District of California, Central Division, in Bankruptcy No. 55,620-BH, which said designations appear in the typewritten transcript of record herein.

Dated: April 5, 1955.

QUITTNER AND STUTMAN,
By /s/ GEORGE M. TREISTER,
Attorneys for Appellant.

[Endorsed]: Filed April 6, 1955.

